

1 SQUIRE, SANDERS & DEMPSEY L.L.P.
Mark C. Goodman (Cal. State Bar No. 154692)
2 Amy E. Rose (Cal. State Bar No. 222167)
Ann J. Lee (Cal. State Bar No. 236501)
3 One Maritime Plaza, Suite 300
San Francisco, CA 94111-3492
4 Telephone: +1.415.954.0200
Facsimile: +1.415.393.9887
5 Email: mgoodman@ssd.com
Email: arose@ssd.com
6 Email: ajlee@ssd.com

7 Attorneys for Defendant
UNITED STATES FIRE INSURANCE COMPANY

8
9 IN THE UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 (OAKLAND DIVISION)
12

13 LENSRAFTERS, INC.; and EYEXAM
14 OF CALIFORNIA, INC.;

15 Plaintiffs,

16 vs.

17 LIBERTY MUTUAL FIRE INSURANCE
COMPANY; EXECUTIVE RISK
18 SPECIALTY INSURANCE COMPANY;
UNITED STATES FIRE INSURANCE
19 COMPANY; MARKEL AMERICAN
INSURANCE COMPANY; and
20 WESTCHESTER FIRE INSURANCE
COMPANY,

21 Defendants.
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Case No. CV- 07-2853 SBA
The Honorable Sandra B. Armstrong

E-FILING

**DECLARATION OF AMY E. ROSE IN
SUPPORT OF UNITED STATES FIRE
INSURANCE COMPANY'S MOTION TO
DISMISS OR, IN THE ALTERNATIVE,
STAY ACTION IN FAVOR OF PRIOR-
PENDING NEW YORK STATE COURT
ACTION**

Date: September 11, 2007
Time: 1:00 p.m.
Courtroom: 3

1 I, AMY E. ROSE, declare as follows:

2 1. I am an attorney-at-law, admitted to practice before all the courts in the State of
3 California and am an associate at Squire, Sanders & Dempsey L.L.P., counsel of record for
4 defendant United States Fire Insurance Company ("U.S. Fire") in this action. This declaration is
5 based on my personal knowledge and, if called on to do so, I would and could testify competently
6 as to the matters set forth herein.

7 2. Attached hereto as **Exhibit A** is a true and correct copy of the Second Amended
8 Complaint filed by Melvin Snow and Sabrina Hughes in the matter of *Snow, et al. v.*
9 *LensCrafters, Inc., et al.* (California Superior Court Case No. CGC-02-405544) on April 3, 2003.

10 3. Attached hereto as **Exhibit B** is a true and correct copy of an online report from
11 Hoovers, a Dun & Bradstreet company, regarding Luxottica Group S.p.A., Luxottica U.S.
12 Holdings Corporation's parent company. This report was accessed and printed from
13 www.hoovers.com on July 15, 2007.

14 4. Attached hereto as **Exhibit C** is a true and correct copy of an online report from
15 the California Secretary of State regarding Eyexam of California, Inc., noting that it changed its
16 name from EyeMed, Inc. in November 2003 and, previously, from Eyexam2000 of California,
17 Inc. in September 1999. This report was accessed and printed from the California Secretary of
18 State's website on June 7, 2007.

19 5. Attached hereto as **Exhibit D** is a true and correct copy of the CFI Defender 2000
20 Commercial Umbrella Policy (Policy No. 553-058755-2) issued by U.S. Fire to Luxottica U.S.
21 Holdings Corporation for the policy period from February 1, 1998 to February 1, 1999.

22 6. Attached hereto as **Exhibit E** is a true and correct copy of the CFI Defender 2000
23 Commercial Umbrella Policy (Policy No. 553-068740-7) issued by U.S. Fire to Luxottica U.S.
24 Holdings Corporation for the policy period from February 1, 1999 to February 1, 2000.

25 7. Attached hereto as **Exhibit F** is a true and correct copy of the CFI Defender 2000
26 Commercial Umbrella Policy (Policy No. 553-076092-8) issued by U.S. Fire to Luxottica U.S.
27 Holdings Corporation for the policy period from February 1, 2000 to February 1, 2001.

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1 8. Attached hereto as **Exhibit G** is a true and correct copy of Liberty Mutual Fire
2 Insurance Company's Commercial General Liability policy No. TB2-681-004130-038 issued to
3 Luxottica U.S. Holdings Corporation for the policy period from February 1, 1998 to February 1,
4 1999.

5 9. Attached hereto as **Exhibit H** is a true and correct copy of Liberty Mutual Fire
6 Insurance Company's Commercial General Liability policy No. RG2-681-004130-039 issued to
7 Luxottica U.S. Holdings Corporation for the policy period from February 1, 1999 to February 1,
8 2000.

9 10. Attached hereto as **Exhibit I** is a true and correct copy of Liberty Mutual Fire
10 Insurance Company's Commercial General Liability policy No. RG2-681-004130-030 issued to
11 Luxottica U.S. Holdings Corporation for the policy period from February 1, 2000 to February 1,
12 2001. Although the remaining potentially-implicated Liberty Mutual policies (*i.e.*, policies issued
13 from 2001 to 2006) are not attached hereto, they are substantially similar to the policy attached as
14 **Exhibit I** and were, similarly, issued to Luxottica in New York State.

15 11. Attached hereto as **Exhibit J** is a true and correct copy of this Court's January 20,
16 2005 Order in Case No. CV-04-1001 SBA granting LensCrafters' motion for partial summary
17 judgment regarding Liberty Mutual's and ERSIC's duties to defend the *Snow* action.

18 12. Attached hereto as **Exhibit K** is a true and correct copy of the Plaintiffs' June 8,
19 2007 Notice of Administrative Motion and Motion To Consider Whether Cases Should Be
20 Related Under Local Rule 3-12(b).

21 13. Attached hereto as **Exhibit L** is a true and correct copy of this Court's October 5,
22 2005 Order in Case No. CV-04-1001 SBA granting ERSIC's motion for partial summary
23 judgment their respective duties to defend the *Snow* action.

24 14. Attached hereto as **Exhibit M** is a true and correct copy of the Civil Docket for
25 Case #4:04-cv-1001-SBA, *Lenscrafters, Inc. et al v. Liberty Mutual Fire Insurance Company* in
26 the United States District Court for the Northern District of California. Final judgment was
27 entered and the case was terminated on November 7, 2005, after which Liberty Mutual filed a
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1 notice of appeal. As of the filing of this Motion, the Liberty Mutual appeal remains pending
2 before the Ninth Circuit, awaiting oral argument.

3 15. Attached hereto as **Exhibit N** is a true and correct copy of a June 27, 2007 letter
4 from Celia M. Jackson of Heller Ehrman, counsel for the plaintiffs in this action, to John P.
5 DeFilippis of Carroll, McNulty & Kull L.L.C., counsel for U.S. Fire in New York, enclosing two
6 Acknowledgements of Receipt by Mail for service on EyeMed Vision Care, LLC and Eyexam of
7 California, Inc. in the New York Action.

8 16. Attached hereto as **Exhibit O** is a true and correct copy of the Plaintiffs'
9 unauthorized June 14, 2007 Reply Memorandum in Support of Administrative Motion To
10 Consider Whether Cases Should Be Related Under Local Rule 3-12(b).

11 I declare under penalty of perjury under the laws of the State of California that the
12 foregoing is true and correct. Executed on July 18, 2007 in San Francisco, California.

13
14 /s/ Amy E. Rose
15 Amy E. Rose
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PROOF OF SERVICE

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is One Maritime Plaza, Third Floor, San Francisco, California 94111-3492.

On July 18, 2007, I served the following document described as:

DECLARATION OF AMY E. ROSE IN SUPPORT OF UNITED STATES FIRE INSURANCE COMPANY'S MOTION TO DISMISS OR, IN THE ALTERNATIVE, STAY ACTION IN FAVOR OF PRIOR-PENDING NEW YORK STATE COURT ACTION

☒ VIA THE UNITED STATES DISTRICT COURT ELECTRONIC FILING SERVICE on interested parties in this action as set forth below:

Richard DeNatale, Esq.
Celia M. Jackson, Esq.
Heller Ehrman LLP
333 Bush Street
San Francisco, CA 94104-2878
Telephone: (415) 772-6000
Facsimile: (415) 772-6268

Robert D. Dennison, Esq.
Harris, Green & Dennison
5959 W. Century Blvd., Suite 1100
Los Angeles, CA 90045
Telephone: (310) 665-8656
Facsimile: (310) 665-8659

Todd A. Roberts, Esq.
Ropers Majeski Kohn Bentley
1001 Marshall Street
Redwood City, CA 94063
Telephone: (650) 364-8200
Facsimile: (650) 780-1701

Terrence R. McInnis, Esq.
Ross, Dixon & Bell, LLP
5 Park Plaza, Suite 1200
Irvine, CA 92614
Telephone: (949) 622-2700
Facsimile: (949) 622-2739

Alex F. Stuart, Esq.
Willoughby, Stuart & Bening
Fairmont Plaza
50 West San Fernando, Suite 400
San Jose, CA 95113
Telephone: (408) 289-1972
Facsimile: (408) 295-6375

Executed on July 18, 2007, at San Francisco, California. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

/s/ Agnes A. Gacayan
Agnes A. Gacayan